

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BARBARA A. HINKLE,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. C12-2128-RSM

**REPORT AND
RECOMMENDATION**

The Commissioner found Barbara A. Hinkle was at fault for overpayment of benefits. Ms. Hinkle appeals the Commissioner's decision not to waive the overpayments. As discussed below, the Court recommends **REVERSING** the Commissioner's final decision and **REMANDING** the matter for further administrative proceedings pursuant to sentence four.

BACKGROUND

Ms. Hinkle has a college degree and has worked as a project manager for large construction projects. In 2003, she began receiving disability benefits. In February 2009, the Social Security Administration notified Ms. Hinkle she was overpaid in the amount of \$51,168.10 for the period spanning November 2006 to December 2008. Ms. Hinkle does not dispute she was overpaid in this amount, or that she performed substantial gainful activity during the time period. Tr. 15. Rather she contends the overpayments should be waived because she

1 was not at fault for the overpayments. *Id.* Ms. Hinkle's request for waiver was denied initially
2 and on reconsideration. After conducting a hearing on April 7, 2011, the ALJ issued a written
3 decision that (1) found Ms. Hinkle was overpaid \$51,168.10 in benefits during the period
4 November 2006 to December 2008; (2) rejected Ms. Hinkle's claim she was not at fault; and (3)
5 found the overpayment not subject to waiver and that Ms. Hinkle was liable for repayment of
6 \$51,168.10. Tr. 13-17. The Appeals Council denied Ms. Hinkle's request for review making the
7 ALJ's decision the Commissioner's final decision.

8 **DISCUSSION**

9 The parties agree Ms. Hinkle was overpaid \$51,168.10 in benefits for the period spanning
10 November 2006 to December 2008. Tr. 14-15; 356-57. They disagree whether the overpayment
11 should be waived. The Commissioner is entitled to recover an overpayment. 20 C.F.R. §
12 404.501. However, an overpayment may be "waived" if the claimant can show: (1) the claimant
13 is "without fault" for the overpayment, and (2) recovery would either defeat the purpose of the
14 Act, or be against equity and good conscience. 20 C.F.R. §§ 404.506(a); 404.507; 404.508;
15 404.509.

16 As to the first step of the waiver analysis, a claimant is at "fault" where the claimant (a)
17 makes an incorrect statement the claimant "knew or should have known to be incorrect," (b) fails
18 to furnish information he "knew or should have known to be material," or (c) accepts payment
19 the claimant "either knew or could have been expected to know was incorrect." 20 C.F.R. §
20 404.507. In assessing whether an overpayment resulted from one of the three types of fault, the
21 Commissioner must consider "all pertinent circumstances," including the individual's age,
22 intelligence, and physical, mental, educational, or linguistic limitations. *Id.* This determination
23 is "highly subjective, highly individualized, and highly dependent on the interaction between the

1 intentions and state of mind of the claimant and the peculiar circumstances of his situation.”
2 *Elliott v. Weinberger*, 564 F.2d 1219, 1233 (9th Cir. 1977), aff’d in part and rev’d in part, 442
3 U.S. 682 (1979). Additionally, the “fault determination requires a reasonable person to be
4 viewed in the claimant’s own circumstances and with whatever mental and physical limitations
5 the claimant might have.” *Harrison v. Heckler*, 746 F.2d 480, 482 (9th Cir. 1984).

6 However, a claimant will not be deemed to be without fault if the Commissioner has
7 evidence “which shows either a lack of good faith or failure to exercise a high degree of care” in
8 informing the Commissioner of changed circumstances which could result in overpayment. 20
9 C.F.R. § 404.511. Further, where the Commissioner may have been at fault in making the
10 overpayment, that fact does not immunize an overpaid claimant from the Commissioner’s
11 attempt to recover overpayments, if the claimant is at fault. This is because “fault” as the term is
12 used in the Commissioner’s regulations, applies only to the claimant. 20 C.F.R. § 404.507. If
13 the claimant was at fault the inquiry ends. But, if the claimant shows he or she was without fault,
14 it must then be determined, at the second step of the “waiver” analysis, whether recovery of
15 overpayments would either defeat the purpose of the Social Security Act or be against equity and
16 good conscience. 20 C.F.R. 42 U.S.C. §§ 404.508 and 509.

17 Here, the ALJ found Ms. Hinkle was given adequate notice about substantial gainful
18 activity, trial work periods and other information bearing on her eligibility to receive disability
19 payments. Tr. 15. Though Ms. Hinkle did not contest receiving the notices she contended she
20 did not understand them due to her mental impairments. The ALJ rejected Ms. Hinkle’s
21 testimony that due to her mental impairments she was unaware of her duty to report changes in
22 her employment status, and also believed she “acted appropriately in collecting disability
23 benefits in addition to substantial work earnings.” *Id.* Instead, the ALJ found Ms. Hinkle

1 “understood that work activity and timely reporting would affect her benefits because she knew
2 enough to notify the SSA after she had been working at Northwest Hospital for 4 months.” Tr.
3 16. The ALJ concluded Ms. Hinkle’s failure to report job changes “highlights” that “she
4 knowingly accepted disability payments to which she was not entitled.” *Id.*

5 Ms. Hinkle’s claim that she is not at fault revolves around mental health problems. The
6 ALJ acknowledged Ms. Hinkle “has mental impairments” but stated “I do not agree with her
7 argument, however, that her impairments affected her ability to understand and process
8 information.” *Id.* The ALJ reached this conclusion on the ground Ms. Hinkle was college
9 educated, worked in “highly skilled, demanding roles” between 2006 and 2008, managed her
10 family’s finances, and was her daughter’s payee and primary caregiver. *Id.* The ALJ concluded
11 “the evidence does not establish that the claimant’s mental impairments prevented her from
12 understand the circumstances of the overpayments,” and that she is therefore at fault for causing
13 the overpayments. *Id.*

14 The ALJ’s finding would be supported by substantial evidence if the record in this case
15 contained only Ms. Hinkle’s uncorroborated claim that her mental impairments prevented her
16 from understanding the circumstances of the overpayment. *See Anderson v. Sullivan*, 914 F.2d
17 1121, 1123-24 (9th Cir. 1990) (ALJ may disregard self-serving statements of claimant that are
18 unverified). But this is not such a case. Rather, this is a case in which the record contained
19 medical and other evidence indicating Ms. Hinkle’s mental impairments impaired her and that
20 the ALJ failed to mention, failed to discuss, and failed to consider this evidence in discounting
21 Ms. Hinkle’s claim that her mental impairments render her not at fault.

22 The record shows that while Ms. Hinkle was hired to perform highly skilled and
23 demanding roles, she decompensated and began exhibiting symptoms of severe mental

1 impairment during the overpayment period. For instance on March 31, 2008, her employers
2 noted that at 10:00 am, on that day, Ms. Hinkle could not be found at the workplace though her
3 shoes and purse were found in the office's fourth floor lobby. Ms. Hinkle's husband called the
4 employer later that day indicating Ms. Hinkle had walked 11 miles from the workplace to her
5 home and was wondering whether the employer could locate a large sum of cash Ms. Hinkle
6 claimed was missing. Tr. 268. Based on this incident, Ms. Hinkle was placed on medical leave
7 for nearly two months. *Id.* Later in August, 2008, Ms. Hinkle's employer found her lying on a
8 couch, shirt askew, and shoes off. Ms. Hinkle indicated she was dizzy, having flashbacks, and
9 feeling confused and disoriented. *Id.* Because Ms. Hinkle continued to have mental health
10 problem, her employer conducted a *Loudermill* hearing to give Ms. Hinkle the chance to
11 respond to, explain, or refute her employer's conclusion that her employment should be
12 terminated. At the hearing, Ms. Hinkle made comments such as she was the "leader of a free
13 union," that there was a "family trust" that allowed members to "listen in," and that the "electoral
14 college" was listening in. Tr. 287. Following the hearing, Ms. Hinkle's employer recommended
15 termination.

16 In addition to observations made by Ms. Hinkle's employers, the record contains medical
17 records from May 2008 and April 2009. The May 2008 intake summary from the Community
18 Psychiatric Clinic described Ms. Hinkle's thought processes as "loose associations," "paranoid,"
19 and "delusions." Tr. 295. Though the intake describes Ms. Hinkle as normal in some respects, it
20 also noted she had impaired memory, judgment and insight. *Id.* The intake noted "most of what
21 [Ms. Hinkle] said was impossible to follow due to loose association – very disorganized
22 thoughts. [Ms. Hinkle] has no insights into these symptoms at this time." Tr. 297.

23 By April 2009, Ms. Hinkle's mental health problems had become so severe she was

1 admitted for inpatient psychiatric care. Her in-patient records indicated:

2 she describes bizarre beliefs about some entity controlling event
3 happening around, a trust set up by her father that somehow
4 continues emotional/physical abuse in childhood perpetrated by
5 her mother, and a belief that lab data can be manipulated and care
6 are controlled by past owners, depending on the gas. Her paranoia
7 is extensive, elaborately complicated and has clear behavioral
8 impact.

9 Tr. 313.

10 The ALJ's failure to consider all of the relevant evidence of record that had a bearing on
11 Ms. Hinkle's credibility and testimony that her mental impairments excuse her from "fault" was
12 not harmless. First, an ALJ must explain why "significant, probative evidence has been
13 rejected," and must explain why uncontroverted medical evidence is rejected. *Vincent v.*
14 *Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984). The ALJ failed do this.

15 Second, if the record showed Ms. Hinkle's testimony was unsupported or contrary to the
16 medical evidence, the ALJ's rejection of her testimony would have been proper. *See Burch v.*
17 *Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) (lack of objective medical evidence is a relevant
18 factor that the ALJ can consider in his credibility analysis). But the opposite was the case here.
19 Rather than a lack of evidence, there existed evidence in 2008 indicating Ms. Hinkle was
20 suffering severe mental impairment during the time period at issue. There was also medical
21 evidence from 2009 which though retrospective in nature was relevant; this is because the
22 symptoms documented in Ms. Hinkle's 2009 in-patient psychiatric commitment echoed the
23 symptoms described in the 2008 Community Psychiatric Clinic records. In any event, a medical
24 opinion should not be disregarded solely because it is retrospective in nature. *Smith v. Bowen*,
25 849 F.2d 1222, 1225 (9th Cir. 1988); *see also* Social Security Ruling ("SSR") 83-20 ("In some
26 cases, it may be possible, based on the medical evidence to reasonably infer that the onset of a

1 disabling impairment(s) occurred sometime prior to the date of the first recorded medical
2 examination, e.g., the date the claimant stopped working.”).

3 Third, there was lay evidence indicating Ms. Hinkle’s mental impairments severely
4 impaired her during the relevant period. Lay testimony as to a claimant’s symptoms is
5 competent evidence an ALJ must take into account, unless the ALJ expressly determines to
6 disregard such testimony and gives reasons germane to each witness for doing do. *Lewis v.*
7 *Apfel*, 236 F.3d 503, 511 (9th Cir. 2001). The ALJ’s reasons for disregarding lay witness
8 testimony must be specific. *See Stout v. Comm’r Soc. Sec. Admin.*, 454 F.3d 1050, 1053 (9th Cir.
9 2006). A lay witness provides an important source of information about a claimant’s
10 impairments, and an ALJ can reject it only by giving specific reasons germane to each witness.
11 *Regennitter v. Comm’r of Soc. Sec. Admin.*, 166 F.3d 1294, 1298 (9th Cir. 1999). None of this
12 occurred here.

13 In short, the ALJ committed legal error by discounting Ms. Hinkle’s testimony without
14 properly considering all of the relevant evidence of record, and without giving any reason to do
15 so. Where the ALJ errs by failing to provide any reason for rejecting relevant evidence, the error
16 is harmless only if the court “can confidently conclude that no reasonable ALJ, when not making
17 the same error as the ALJ, could have reached a different disability determination.” *Stout*, 454
18 F.3d at 1055-56. Given the record, the Court cannot confidently conclude a reasonable ALJ,
19 considering all of the evidence could not reach a different determination. This is a case in which
20 an ALJ could find Ms. Hinkle performed certain actions, work for instance, that indicated she
21 had the wherewithal to understand her Social Security disability eligibility reporting
22 requirements, but that she nonetheless did not understand, or, did not or could not act on her
23 reporting requirements due to mental illness. Accordingly, the Court concludes the ALJ’s error

1 in discounting Ms. Hinkle's testimony was not harmless and the matter must be remanded.

2 The Court also concludes the matter should be remanded for further proceedings. The
3 Court may remand for waiver of overpayment where "the record has been fully developed and
4 further administrative proceedings would serve no useful purpose." *See McCartey v. Massanari*,
5 298 F.3d 1072, 1076 (9th Cir. 2002). The record here is not fully developed. The ALJ did not
6 evaluate the medical and lay evidence of record, and thus it would be inappropriate for the Court
7 to evaluate and weigh the evidence in the first instance and leap-frog over determinations
8 normally reserved to the Commissioner. Additionally, the Court cannot say that the medical and
9 lay evidence would indisputably lead a fact-finder to accept Ms. Hinkle's testimony that her
10 mental impairments render her without fault for the overpayment; they may but as noted above,
11 the ultimate decision whether they actually do is a determination reserved to the Commissioner.
12 Additionally, the current record contains evidence indicating that from March 2008 to 2009, Ms.
13 Hinkle exhibited symptoms consistent with a mental health condition that could be deemed
14 severely impairing. But it is unclear exactly what Ms. Hinkle's mental condition was for the
15 remainder of the relevant time period which begins November 2006. It could be that Ms. Hinkle
16 was less impaired prior to March 2008 which would tend to support a finding that she was not
17 without fault during that time period. But that determination is for the Commissioner to address
18 in her review of the record, reevaluation of Ms. Hinkle's testimony and assessment of whether
19 the record needs further development.

20 As a final matter, the Court notes and rejects Ms. Hinkle's contention that her bankruptcy
21 moots the Commissioner's finding that she was at fault for causing an overpayment. The sole
22 issue before the Court is whether the ALJ erred in finding Ms. Hinkle was at fault in causing an
23 overpayment; thus whether the overpayment was discharged in bankruptcy has no bearing on

1 this issue.

2 **CONCLUSION**

3 For the foregoing reasons, the Court recommends **REVERSING** the Commissioner's
4 decision and **REMANDING** the case for further administrative proceedings pursuant to sentence
5 four. On remand, the Commissioner should consider all relevant medical and lay evidence
6 bearing on Ms. Hinkle's testimony that her mental impairments render her without fault for the
7 overpayment; reevaluate Ms. Hinkle's testimony, and develop the record as deemed appropriate.

8 Any objections to this Recommendation must be filed and served upon all parties no later
9 than **August 2, 2013**. If no objections are filed, the matter will be ready for the Court's
10 consideration on **August 9, 2013**. If objections are filed, any response is due within 14 days
11 after being served with the objections. A party filing an objection must note the matter for the
12 Court's consideration 14 days from the date the objection is filed and served. Objections and
13 responses shall not exceed twelve (12) pages. The failure to timely object may affect the right to
14 appeal.

15 DATED this 19th day of July, 2013.

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18 BRIAN A. TSUCHIDA
19 United States Magistrate Judge
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